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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,080	04/22/2004	Todd Russell Ingram		6026
27955	7590	07/31/2007	EXAMINER	
TOWNSEND & BANTA			OKEZIE, ESTHER O	
c/o PORTFOLIO IP			ART UNIT	PAPER NUMBER
PO BOX 52050			3652	
MINNEAPOLIS, MN 55402				

MAIL DATE	DELIVERY MODE
07/31/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/829,080	INGRAM, TODD RUSSELL
	Examiner	Art Unit
	Esther O. Okezie	3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 April 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 7-10, 12, 16 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 7-10, 12, 16 and 18 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

DETAILED ACTION

Response to Amendment

The amendment filed on 4/09/2007 and the remarks presented therewith have been carefully considered. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 7 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by McVey US 4,715,632.
2. Re claim 7, McVey discloses a tool comprising a unary, v-shaped (at least as far as Applicant's invention depicts a v-shape), flexible open-jawed mouth having a closed end (11) defining an outer perimeter, and an open end (14) defined by an inner perimeter, said inner perimeter comprised of a first straight portion (10) having a first end, a second end, and a middle portion therebetween, a curved portion (11) having a first end, the first end of the curved portion being connected to the second end of the straight portion; and a second straight portion (10) having a first end, a second end, and a middle portion therebetween, the first end of the second straight portion being

connected to the second end of the curved portion; said unary, v-shaped, flexible open-jawed mouth exhibiting a spring-like effect when the first straight portion and the second straight portion are urged apart (col. 2, lines 40-66) and resilient flexing shown in figure 6); friction ridges (17) at spaced intervals along the entire length of the middle portions of straight portions of the inner perimeter of the mouth; an elongated connecting rod (16); means (socket 15) of joining said connecting rod at its lower end to one side portion of said mouth such that the closed end of said mouth is directed toward a user; a handgrip (see upper portion of rod 16); and means of joining said handgrip to said connecting rod at its upper end;

McVey certainly discloses an integral hand-gripped resilient tool exhibiting a spring-like effect capable of lifting, moving, and releasing an objecting without the user manipulating movable parts (col. 2, lines 40-66) as claimed however, the functional recitation "whereby a user can grip said fireplace tool by said hand grip, push said open jawed mouth onto said log, thus applying a progressively tightened gripping force created by the combination of said spring-like effect and said friction effect, lift, move, reposition, and release said log, without manipulating any moving parts" has not been given patentable weight because it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

3. Re claim 12, McVey discloses joining three pieces the open jawed mouth, connecting rod, and handgrip (figs. 1 and 7).

4. Claims 7-9 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Thomas US 4,762,303.
5. Re claim 7, Thomas discloses a tool comprising a unary, v-shaped (at least as far as Applicant's invention depicts a v-shape), flexible open-jawed mouth having a closed end (20) defining an outer perimeter, and an open end (16) defined by an inner perimeter, said inner perimeter comprised of a first straight portion (13) having a first end, a second end, and a middle portion therebetween, a curved portion (14) having a first end, the first end of the curved portion being connected to the second end of the straight portion; and a second straight portion (10) having a first end, a second end, and a middle portion therebetween, the first end of the second straight portion being connected to the second end of the curved portion; said unary, v-shaped, flexible open-jawed mouth exhibiting a spring-like effect when the first straight portion and the second straight portion are urged apart (col. 2, lines 20-33; figs 1-4); friction ridges (13a,14a) at spaced intervals along the entire length of the middle portions of straight portions of the inner perimeter of the mouth; an elongated connecting rod (11); means (Fig 2: 65a) of joining said connecting rod at its lower end to one side portion of said mouth such that the closed end of said mouth is directed toward a user; a handgrip (65); and means of joining said handgrip to said connecting rod at its upper end (fig 2);

The functional recitation "whereby a user can grip said fireplace tool by said hand grip, push said open jawed mouth onto said log, thus applying a progressively tightened gripping force created by the combination of said spring-like effect and said friction

effect, lift, move, reposition, and release said log, without manipulating any moving parts" has not been given patentable weight because it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

6. Re claim 8, Thomas discloses a wedge shaped tip (13a) disposed as an in-line extension of the first end of the first straight portion of said inner perimeter of said mouth.
7. Re claim 9, Thomas discloses said tool is made from steel (col. 2, lines 12-15).
8. Re claim 12, Thomas discloses joining three pieces the open jawed mouth, connecting rod, and handgrip (fig. 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas US 4,762,303. Thomas discloses the tool is made from steel but not iron. It would have been obvious to one of ordinary skill at the time of the invention to form the jaws from iron or steel as iron and steel are well known as durable materials, since it has been

held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

Claims 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas US 4,762,303 in view of US Patent Application Publication 2005/0110289 to Myers. Thomas does not disclose the use of threaded coupling to connect the jaw, rod or handgrip together. Myers discloses a dual function fireplace poker connected by threaded couplings (see fig 2 and paragraph 18) It would have been obvious to one of ordinary skill at the time of the invention to connect the sections of the tool of Thomas by threaded couplings as taught by Myer so that the tool could be disassembled and stored in a compact manner.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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7/25/07

Saul Rodriguez
SAUL RODRIGUEZ
SUPERVISORY PATENT EXAMINER